CRIMINAL PROCEDURE—VACATION OF JUDGMENT—POWER OF JUDGE.—The defendant was convicted and sentenced to a reformatory. After he had begun the execution of the sentence, but during the same term at which it was passed upon him, the judge vacated his judgment and awarded a new trial. *Held,* the judge is without power to vacate the sentence. *People ex rel. Atty. Gen.* v. *Turney* (Ill.), 113 N. E. 105.

It is a well settled rule of the common law, adhered to until the present day, that when the judge signs the judgment roll and adjourns court the record becomes complete, and no sentence can then be changed or altered in any way. *Commonwealth* v. *Foster,* 122 Mass. 317. See *McCarthy* v. *State,* 56 Miss. 294. This is true even though the court may have reserved the right to change its sentence at a subsequent term. *Commonwealth* v. *Mayloy,* 57 Pa. St. 291. But during the continuance of the term, a court has complete control of its records and may change any sentence imposed at that term the execution of which has not been entered upon. *Regina* v. *Fitzgerald,* 1 Salk. 401; *King* v. *Price,* 6 East. 323; *Commonwealth* v. *Weymouth,* 2 Allen (Mass.) 144, 79 Am. Dec. 776. This right is based on the theory that all matters remain in the breast of the court during the term, and do not become final until the record is closed. CO. LITT. 260a; *Lee* v. *State,* 32 Ohio St. 113.

However, the great weight of authority holds that where, as in the principal case, the prisoner has entered upon the execution of his sentence the court has no further jurisdiction over him and his sentence can not be changed. *Brown* v. *Rice,* 57 Me. 55, 2 Am. Rep. 11; *Smith* v. *District Court,* 132 Ia. 603, 11 Ann. Cas. 296; *People* v. *Kelley,* 79 Mich. 320, 44 N. W. 615. Yet even where the sentence has been partially executed it has been held that it may be mitigated. *Matter of Brittain,* 93 N. C. 587; *State* v. *Whitt,* 117 N. C. 804, 23 S. E. 452. See *Plain* v. *State,* 60 Ga. 284. To permit the court to change its sentence after the execution of the sentence has been entered upon would have the effect of empowering a court to punish a prisoner twice for the same offense. *People* v. *Sullivan,* 54 Misc. 489, 106 N. Y. Supp. 143. See *Ex parte Lange,* 18 Wall (U. S.) 163. Of course, where the sentence has been fully executed it can not be changed at any time. *Ex parte Lange, supra; Pifer* v. *Commonwealth,* 14 Gratt. (Va.) 710.

DEEDS—CANCELLATION—FAILURE TO FURNISH SUPPORT.—The complainant conveyed land to the respondent in consideration of the latter's promise to support him for life. The son failed to support his father, and this suit is brought to have the deed cancelled. *Held,* the complainant is not entitled to cancellation of the deed. *Lowery* v. *Lowery* (Miss.), 71 South. 309.

Cases of this kind generally arise where old and infirm persons who are unable to work endeavor to provide a home for themselves by conveying their property to some near relative who promises to support and care for them. This agreement is not regarded as an ordinary obligation, and the courts will usually bend every effort, sacrificing technical rules if need be, to save the grantor harmless on account of his misplaced confidence. *Bruer* v. *Bruer,* 109 Minn. 206, 123 N. W. 813, 28 L. R. A.

(N. S.) 608; *Bogie* v. *Bogie,* 41 Wis. 209. While it is thus generally agreed that the grantor is entitled to some relief, there is much uncertainty and confusion among the cases as to the kind of relief which should be granted.

Probably the most adequate and generally accepted doctrine is to consider the provision as a condition subsequent a breach of which will defeat the estate granted. *Glocke* v. *Glocke,* 113 Wis. 303, 89 N. W. 118, 57 L. R. A. 458; *Britton* v. *Taylor* (N. C.), 84 S. E. 280. But some cases refuse to consider such a provision in this light, because of the general rule that conditions subsequent will not be implied since they tend to defeat the estate. *Lowman* v. *Crawford,* 99 Va. 688, 40 S. E. 17.

Of course, where the grantee is guilty of fraud, either actual or constructive, in obtaining the conveyance, it will be set aside. *Gore* v. *Sumersall,* 5 T. B. Mon. (Ky.) 505. And where the agreement is fraudulently made by the grantee with no intention of performing it, the conveyance will be set aside in equity. *Wampler* v. *Wampler,* 30 Gratt. (Va.) 454; *Spangler* v. *Yarborough,* 23 Okla. 896, 101 Pac. 1107, 138 Am. St. Rep. 856. And in some jurisdictions, the deed will be cancelled for the breach of the condition on the broad ground that a denial of such relief would perpetrate a fraud on the grantor, and that it would be against equity and good conscience to allow the grantee to keep the land. *Diggins* v. *Doherty,* 4 Mackey (D. C.) 172; *Reid* v. *Burns,* 13 Ohio St. 49.

Some cases hold that, since equity looks to the substance rather than to the form of such agreements, where the grantee refuses to perform his promise it is as if the grantor received nothing for his land, and that equity will cancel the deed and restore the parties to their former position. *Haataja* v. *Saarenpaa,* 118 Minn. 255, 136 N. W. 871; *Lane* v. *Lane,* 106 Ky. 530, 50 S. W. 857. *Contra, Dickson* v. *Milling,* 102 Miss. 449, 59 South. 804, 43 L. R. A. (N. S.) 916. And it has also been held that such a promise creates a continuous obligation on the part of the grantee, in the nature of a trust, for the breach of which there is no adequate remedy at law. *Grant* v. *Bell,* 26 R. I. 288, 58 Atl. 951; *Patterson* v. *Patterson,* 81 Iowa 626, 47 N. W. 768.

Yet some courts refuse to cancel the deed, and content themselves with giving other relief, even though it is inadequate. Thus, it has been held, though there are cases to the contrary, that such a provision in a deed constitutes a lien on the land. *Pownal* v. *Taylor,* 10 Leigh. (Va.) 172; *Whitaker* v. *Trammell,* 86 Ark. 251, 110 S. W. 1041. See *contra, Grant* v. *Swank* (W. Va.), 81 S. E. 967, L. R. A. 1915B, 881. Or that it is an equitable mortgage. *Abbott* v. *Sanders,* 80 Vt. 179, 66 Atl. 1032, 13 L. R. A. (N. S.) 725, 130 Am. St. Rep. 974, 12 Ann. Cas. 898. Still other courts confine the grantor's right to an action at law to recover damages for the breach of the agreement. *Gardner* v. *Knight,* 124 Ala. 273, 27 South. 298. Because of the personal nature of the services and the difficulty of determining what constitutes a proper performance, specific performance will not be decreed. *Gardner* v. *Knight, supra.*

EVIDENCE — ADMISSIBILITY — CONTEMPORANEOUS PAROL AGREEMENT.—Defendants borrowed money from plaintiff association, executing two